

[REDACTED]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

HEADWATER RESEARCH LLC

*Plaintiff,*

v.

SAMSUNG ELECTRONIC CO., LTD and  
SAMSUNG ELECTRONICS AMERICA, INC.,

*Defendants.*

Case No. 2:22-CV-00422-JRG-RSP

**SAMSUNG DEFENDANTS' MOTION TO EXPEDITE BRIEFING ON SAMSUNG'S  
MOTION TO STRIKE CERTAIN OPINIONS OFFERED BY DR. RICHARD D. WESEL  
OR TO ALTERNATIVELY EXTEND DEADLINES**

Defendants Samsung Electronics Co., LTD (“SEC”) and Samsung Electronics America, Inc. (“SEA”) (collectively “Samsung”) respectfully file this opposed motion to expedite briefing on Samsung’s Motion to Strike Certain Opinions offered by Dr. Richard D. Wesel or, alternatively, to extend the deadline for rebuttal expert reports until two weeks after the Court issues its Orders on Headwater’s previously filed motion to amend its infringement contentions, D.I. 127, and Samsung’s concurrently-filed Motion to Strike.

Headwater continues to engage in trial by ambush. Two days before the close of fact discovery, Headwater filed a motion to amend its infringement contentions to accuse Samsung’s [REDACTED] a feature Headwater knew, or should have known, about since April 2023. D.I. 147; D.I. 159. While the Court has not granted or denied Headwater’s motion to amend its infringement contentions, Dr. Wesel nevertheless accused [REDACTED] of infringing the Asserted Patents in his opening report.

Now, two weeks *after* the close of fact discovery, Headwater's technical expert, Dr. Wesel, attempts to inject even more new infringement theories and products into the case. Despite knowing about [REDACTED] feature since last year, and knowing about "Samsung's Network Policy mechanism," which utilizes publicly available Network Policy Manager files, since before the filing of the Complaint, Headwater did not accuse those features in its infringement contentions. Nor did Headwater attempt to add them to this case when it filed its motion to amend the infringement contentions on March 12, 2024. Rather, Headwater laid in wait, accusing these features of infringement for the first time in Dr. Wesel's March 29, 2024 report on infringement. If that were not enough, Dr. Wesel's report also newly accuses certain features of satisfying patents and limitations where Headwater's infringement contentions never accused those features. Indeed, Dr. Wesel's opinions relating to the '224 patent, for example, only accuse "App Standby" and "Doze" of infringing, despite Headwater's contentions only accusing "Data Saver" and "Power Saving Mode." In other words, there is zero overlap between what Headwater previously accused for the '224 patent, and what Dr. Wesel now accuses for the same patent. These same issues exist for nearly every claim of every patent.

There is no dispute that Headwater failed to set forth the above infringement theories and accusations in its initial infringement contentions. Headwater cannot claim that it was diligent, given that it has known about the newly accused features for a year or more. There is no dispute that permitting Headwater to add new infringement theories for the first time during expert discovery would severely prejudice Samsung, who justifiably relied on Headwater's earlier contentions. And no continuance could possibly cure that prejudice. Thus, Samsung is filing, concurrently herewith, a motion to strike portions of Dr. Wesel's report relating to these new infringement theories.

Samsung submits that expedited briefing is appropriate in view of the close proximity of the approaching April 19, 2024 deadline for rebuttal expert reports, the straightforward nature of the issues presented in Samsung's motion, and the tailored relief sought by Samsung. Moreover, absent the Court's guidance on what infringement theories are properly, or improperly, included in Dr. Wesel's report, Samsung will have no choice but to likely expend hundreds of thousands of dollars and hundreds of hours (both by its experts and its attorneys) responding to infringement opinions that may be stricken.

Counsel for Samsung and Headwater have conferred, and Headwater opposes the expedited briefing requested by Samsung.

Samsung thus respectfully requests that the Court grant this Motion and enter an order shortening the briefing schedule as follows: (1) Headwater's response in opposition to Samsung's Motion to Strike Certain Opinions Offered by Dr. Richard D. Wesel is due on or before April 8, 2024, and (2) no further briefing is allowed.

Alternatively, Samsung respectfully requests that the Court extend the deadline for serving rebuttal expert reports until two weeks after the Court issues its Orders with respect to Headwater's previously filed motion to amend its contentions, D.I. 127, and Samsung's Motion to Strike Certain Opinions Offered by Dr. Richard D. Wesel, and order the parties to work together to adjust additional deadlines as necessary. Doing so would allow the parties to address only unstricken opinions and avoid the need to spend substantial time and resources rebutting opinions that may be stricken.

Dated: April 2, 2024

Respectfully submitted,

By: /s/ Jared Hartzman

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on Plaintiff through its counsel of record via email on April 2, 2024.

/s/ Jared Hartzman  
Jared Hartzman

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that counsel for Defendants have complied with the meet and confer requirement in Local Rule CV-7(h). This motion is opposed. The personal conference required by Local Rule CV-7(h) was conducted on April 1, 2024 and April 2, 2024. The parties were unable to reach agreement as to Samsung's requested relief.

/s/ Jared Hartzman  
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